



Universal Service Administrative Company

Irene M. Flannery
Senior Vice President, Programs

September 7, 2005

Thomas Navin
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: In re Federal-State Joint Board on Universal Service, Request for Clarification of
Clerical Changes and for Direction to USAC, CC Docket 96-45

Dear Mr. Navin:

I am writing to provide information in response to a letter from John Nakahata, Counsel for General Communications, Inc. (GCI) to you dated June 29, 2005, whereby GCI requests what it terms clarification of clerical changes and direction to USAC. The Wireline Competition Bureau (WCB) has sought comment regarding GCI's letter, which alleges that: (1) the Universal Service Administrative Company's (USAC) statement regarding capturing of incumbent lines was legally erroneous, and (2) USAC's "policy" response regarding its administration of 47 C.F.R. § 54.307 was procedurally improper.

(1) USAC's statement regarding capturing lines simply reiterated USAC's administrative procedures based on current FCC rules.

In the initial inquiry from Matanuska Telephone Authority (MTA) to USAC and the Federal Communications Commission (FCC), MTA requested clarification on how universal service support is disbursed to carriers in study areas that have both facilities-based and non-facilities-based competitors that have been designated as competitive eligible telecommunication carriers (CETCs). In USAC's response to FCC staff, USAC described its current administrative practice for calculating support for CETCs. USAC further explained that it currently does not collect data necessary to calculate carriers' support when carriers use loops purchased as unbundled network elements (UNEs) as there is no mechanism for collecting such information.¹ Because the data is not presently collected, USAC pays CETCs the same per-line amount as the incumbent carrier in whose service area the CETC serves.

¹ See Competitor Line Count Form (FCC Form 525), 70 Fed. Reg. 143 at 43428-29 (July 27, 2005).

In its response to an informal request from an FCC staff member, USAC confirmed that MTA's understanding of the administrative procedure was correct only to the extent that carriers receive support using UNEs. USAC did not address the administrative procedures relating to carriers receiving support for use of their own facilities. In fact, on April 8, 2004, USAC requested guidance from WCB on the interpretation of 47 C.F.R. § 54.307. In this request for guidance, USAC clearly stated that section 54.307(a)(2) of the FCC's rules was not being applied for the reasons stated above. In addition, USAC stated that all CETCs, whether receiving support via UNEs or for use of their own facilities, were receiving the same per-line support amount as the incumbent local exchange carriers in whose study area the competitor serves without loss of support to the incumbent carrier. USAC applies the FCC rules concerning universal service that are currently in effect. USAC cannot apply 47 C.F.R. § 54.307(a)(4) in the manner sought by GCI because that subsection was deleted from the rules when the *Ninth Report and Order*² was adopted in 1999.

(2) USAC's response to FCC staff was proper.

USAC is the neutral third party administrator of the Universal Service Fund and in its role as administrator it is required to apply the FCC's rules. USAC is well aware that pursuant to 47 C.F.R. § 54.702(c), USAC (as the Administrator) does not have the authority to make or interpret policy, nor does it undertake these activities. Neither section 54.702(c) nor any other regulation, however, precludes USAC from explaining its disbursement practices to the FCC or a recipient or prospective recipient of universal service funds.

The intent of the correspondence with FCC staff was to describe USAC's current and prospective administrative practices concerning 47 C.F.R. § 54.307 in the context of UNEs so that a recipient of High Cost support would have a better understanding of USAC's practices. USAC's response did not "make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."³

USAC's response to the FCC request for information was sent only to FCC staff and USAC employees. FCC staff forwarded this response to Matanuska Telephone Association, and the cover note stated "[h]ere is the policy response [] received from USAC." The statement by the FCC to Ms. Robinson does not state that USAC is making policy, interpreting unclear provisions of the statute or rules or interpreting the intent of Congress. Characterization of USAC's response in this manner does not accurately reflect USAC's intent or the substance of the e-mail in question.

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, 14 FCC Rcd. 20432, 20503 (1999) (*Ninth Report and Order*).

³ See 47 C.F.R. § 54.702(c).

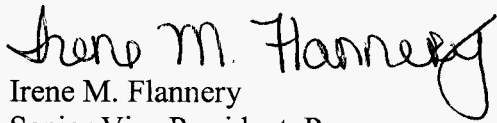
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In conclusion, USAC did not in this matter interpret policy or make policy decisions. It simply stated the administrative practice by which CETC support is calculated when carriers use loops purchased through UNEs. Furthermore, USAC was responding to a question raised by an FCC staff member. The clear intent of USAC's e-mail to the FCC was to inform staff of USAC's practices and administrative procedures in an effort to more fully inform a recipient of High Cost support.

We would be happy to discuss this matter further should you require any additional information.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Irene M. Flannery". The signature is written in a cursive style with a large, stylized "F" and "y".

Irene M. Flannery
Senior Vice President, Programs
Universal Service Administrative Company